



JURIDICAL REVIEW OF LEGAL PROTECTION OF UNILATERAL EXECUTION OF THE OBJECT OF MOTOR VEHICLE CREDIT AGREEMENT BY THE FINANCING INSTITUTE OF PT. BCA FINANCE BRANCH OF SERANG (CASE STUDY OF DECISION NO.134/PDT.G/2021/PN.SRG)

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Abstract

Every consumer must be protected by their rights, and consumer protection guarantees must receive sufficient attention. As consumers, we should be protected from various types of transaction fraud, have the right to obtain clear information, and, of course, the right not to be discriminated against. Fiduciary guarantees are used as a supporting basis for a motor vehicle agreement contract as collateral, so that when the Debtor cannot fulfill its obligations, the creditor does not make a unilateral withdrawal of the vehicle.

In conducting this research, the author employs a critical analysis of theories, including agency agreement theory, legal certainty theory, and the theory of fiduciary duty. The basis of the regulation that is broken is Law Number 42 of 1999 concerning Fiduciary Guarantee and Decision of the Constitutional Court (MK) Number 18/PUU-XVII/2019, as well as the Civil Code, and is supported by several relevant studies.

The methods used in this research are Normative Juridical and Literature Study in the form of qualitative research. The research was conducted at the Serang Banten District Court, where the object of the study was the court decision. The research was conducted over a period of three months, from May to July 2025. Data was obtained from primary data sources in the form of Law and Court Decision Number 134/Pdt.G/2021/PN.Srg, as well as secondary supporting materials and tertiary sources that support primary and secondary materials. This research is qualitative.

The discussion in this research concerns the leasing party's unilateral withdrawal of the collateral object, in the form of a vehicle, without the Debtor's voluntary surrender or a court decision. The Debtor feels very disadvantaged by this. Creditors/Leasing have committed unlawful acts against Law Number 42 of 1999 concerning Fiduciary Guarantees and Constitutional Court (MK) Decision Number 18/PUU-XVII/2019.

The conclusion from this research is that the leasing party has committed an unlawful act, which is regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees and Decision of the Constitutional Court (MK) Number 18/PUU-XVII/2019. Suppose the collateral object in a vehicle credit agreement is unable to carry out its obligations. In that case, the creditor/leasing party may not carry out unilateral execution without a voluntary surrender from the Debtor or a court decision with permanent legal force to confiscate the collateral object.

Keywords: Legal Protection, Unilateral Execution, Object of Credit Agreement

INTRODUCTION

National development activities cannot be separated from the implementation of economic development activities. The existence of economic activities can be indicated by the movement of the community's economy and the business world. Community economic activities, especially in the business world, are very closely related to capital problems. The power of capital has a significant impact on the community's and the business world's ability to undertake activities. This capital issue is undoubtedly crucial to note because capital is one of the key elements in conducting business activities. One method for obtaining capital is through credit facilities.

People's desire to own vehicles, especially four-wheeled or two-wheeled cars, is very high;

limited funds to own these vehicles are one of the factors. The products that have been produced encourage people to own them, despite the existing funds to buy goods being insufficient. It is a significant problem in itself for lower-middle-class individuals with low incomes. To overcome this problem, new financial institutions have emerged that are considered more flexible in obtaining loan funds.

Credit facilities are provided by the payment guarantor, where the Debtor is the consumer taking out vehicle credit, and the bank/non-bank/leasing party serves as the financing party/creditor, bound by a vehicle financing credit agreement, with the vehicle serving as the collateral object. One of the material guarantees that can be guaranteed in a debt and receivable agreement is a Fiduciary Guarantee as regulated in Law Number 42 of 1999 concerning Fiduciary Guarantee (hereinafter referred to as UUJF). Based on Article 1, paragraph 2 of Law Number 42 of 1999 concerning Fiduciary Guarantee. "Fiduciary collateral is a security right over movable objects, both tangible and intangible, and immovable objects, especially buildings which cannot be encumbered with mortgage rights as intended in Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, which remain in the control of the Fiduciary Giver, as collateral for the repayment of certain debts, which gives the Fiduciary Recipient a preferred position over other creditors (*kreditur preferen*)."

In a credit agreement, the contract does not preclude the possibility that one party may not fulfill its obligations properly in accordance with the terms of the agreement. In this case, it will undoubtedly cause problems with the agreement and will likely lead to a dispute related to the object of guarantee in a credit contract. Finally, the parties will take a stand-alone position to cover the loss without adhering to the applicable regulations governing the procedures for conducting a financing contract with the objective of vehicle guarantee. Often when the Debtor does not carry out its obligations or pays installments every month, the leasing/creditor takes actions which execute their own guarantee objects in the form of vehicles as a substitute for infrastructure that have not been paid and the remaining debt that is still included in the financing company system without going through applicable procedures in accordance with applicable laws.

According to the Minister of Finance Regulation for finance companies, the leasing party cannot take possession of the vehicles. It was stated in Article 3 of the Minister of Finance Regulation (PMK) No. 130/PMK.010/2012 concerning Fiduciary Registration for Financing Companies. Financing companies are prohibited from withdrawing fiduciary guarantees in the form of motorized vehicles if a fiduciary registration has not issued a fiduciary guarantee certificate and submitted it to finance companies, the motorbike creditor.

This research is based on the decision of the Tangerang District Court, Case Decision Number 134/PDT.G/2021/PN.SRG, which partially granted the Plaintiff's lawsuit. Where the Debtor, as the Plaintiff, has suffered both material and immaterial losses due to the unilateral withdrawal of objects carried out by the Defendant without the basis of a fiduciary certificate or a court decision.

LITERATURE REVIEW

The Principle of Legal Protection

Legal protection is an important basis for analyzing unilateral enforcement of motor vehicle loan collateral. According to this theory, every citizen has the right to both preventive and repressive legal protection. Preventive legal protection is implemented through the establishment of fair rules or agreements that do not harm either party, while repressive legal protection is provided when legal violations and disputes between parties occur.

Philipus M. Hadjon explains that legal protection for the public can be provided in two forms: preventive protection, which prevents violations through fair policies and regulations, and repressive protection, which functions to resolve disputes after violations have occurred (Hadjon in Carissa et al., 2024). In the context of motor vehicle financing agreements, if a creditor unilaterally repossesses a vehicle without following the procedures stipulated in Law Number 42 of 1999 concerning Fiduciary Guarantees, such action can be categorized as a legal violation requiring protection for the debtor (Ramadhani & Al Imron, 2020). Thus, the theory of legal protection becomes a legal basis in assessing the legitimacy of unilateral execution actions by financing institutions.

The Principle of Good Faith and Freedom of Contract

In civil law, the legal relationship between creditors and debtors is always based on the principle of freedom of contract, as stipulated in Article 1338 of the Civil Code, which grants the parties the freedom to determine the content and form of the agreement. However, this principle is not absolute, as it remains limited by the principle of good faith to prevent abuse of a dominant position by one party.

Simangunsong et al. (2025) emphasize that in motor vehicle financing agreements, the application of the principle of good faith is crucial to prevent the emergence of standard clauses that are unilateral and detrimental to the debtor. Conversely, the principle of freedom of contract allows the parties to adapt the agreement to their own interests, but moral and legal constraints remain the primary controls to prevent imbalances in the agreement (Nurlaily, 2024). Therefore, the execution of a fiduciary guarantee without the consent or proper notification to the debtor is considered inconsistent with the principle of good faith in the agreement and can be legally challenged.

METHOD

In this study, a normative juridical approach is employed. Namely, the approach taken involves using legal materials, especially reciting and selecting from the *triori-tiori* legal journal, articles, and print and online media, as well as the legal concepts and opinions of leading law scholars. Legislation and legal principles related to research are the problems contained in the decision of the Serang

District Court regarding unlawful acts in motor vehicle credit agreements at Leasing Financing Institutions.

Legal Materials Research is a normative legal material, encompassing a literature of legal materials, including primary, secondary, and tertiary sources, in the search for relevant legal information. Researchers do so by examining, reading, and listening to legal materials, as well as searching for such materials on the Internet or through websites.

RESULTS AND DISCUSSION

Legal Protection for Debtors Against Unilateral Fiduciary Guarantee Execution by Creditors

Article 29 of Law Number 42 of 1999 states that execution is the exercise of an executive title by the Fiduciary Recipient, meaning that execution can be carried out directly without going through a court decision process. The legal force of the execution is final and binding on the parties to carry it out³⁹. Based on the above provisions, in practice, it is common for fiduciary guarantees to be executed unilaterally without a court judge's decision, which has permanent legal force. Execution carried out by the finance company or by creditors against fiduciary guarantees is considered to have binding legal force and is final. The provisions above imply that in civil cases, the term 'execution' refers to an effort made by the creditor to recover their rights from the Debtor and is enforced if the Debtor does not voluntarily fulfill the legal obligations that have been agreed upon. In practice, the execution of fiduciary guarantees can be carried out not only in connection with the judge's decision, but also as the implementation of the Grosse Deed or fiduciary guarantee certificate that has been agreed upon by the parties, as well as the implementation of decisions from authorized institutions or even direct creditors.

Execution of Fiduciary Guarantee is justified by Law Number 42 of 1999 concerning Fiduciary Jaminan, it can be seen in Article 15 paragraph (2) of the A QO Law, therefore the fiduciary guarantee certificate uses the "for justice based on the God Almighty" means the legal force is the same as the strength of a legal decision with a permanent legal decision. This Irah-rah gives the executive title and indicates that the deed is only executed without having to go through a court decision. Therefore, Fiat executes a deed, such as implementing a permanent court decision, by requesting that the court's chairman carry out the execution.

Potential losses experienced by debtors due to unilateral execution actions carried out by creditors can take other legal routes to recover their rights that creditors have seized. By applying the basis of Article 15, paragraph 2, the creditor forcibly takes over the fiduciary collateral object without the Debtor's agreement or consent. In principle, execution can be carried out outside of court if the Debtor voluntarily hands over a small or large part of the fiduciary collateral to the creditor in accordance with the agreement agreed upon by both parties.

Legal measures taken by the Debtor if the creditor carries out unilateral execution

Legal action can be taken by reporting this matter to the police because the actions carried out

by the creditor are an unlawful seizure of the Debtor's rights, as most or a small part of the fiduciary collateral object confiscated by the creditor is part of the Debtor's rights, meaning that the Debtor and creditor still have rights to the fiduciary collateral object. Actions carried out by the creditor can also be sued civilly because the creditor has committed an unlawful act that is detrimental to the rights of the Debtor. To restore these rights, the matter can be submitted to court for a civil trial, as it has harmed the Debtor and is contrary to the principles of the agreement between the two parties. Alternatively, an Unlawful Act lawsuit can be filed against the leasing company in the District Court. The procedures for implementing the execution of fiduciary guarantees based on positive law

The execution of fiduciary guarantees is carried out by referring to the provisions of Article 15, paragraph 2 of Law Number 42 of 1999 concerning Fiduciary Guarantees, which states "fiduciary guarantee certificates as referred to in paragraph 1 have the same executorial power as court decisions that have obtained permanent legal force". This provision has so far served as a reference for creditors to carry out unilateral execution of fiduciary collateral objects using the debt collector as a team.

The executory to take over part or all of the fiduciary guarantees that were initially in the hands of the Debtor. Based on the provisions of Article 29 of Law Number 42 of 1999 concerning Fiduciary Guarantee, it has also been regulated that if the Debtor is an appointed injury, the execution of the object of fiduciary guarantees can be done in several ways, namely: Implementation of executive title as intended in Article 15 paragraph (2) by the Fiduciary Recipient; b. sale of objects which are the Object of Fiduciary Guarantee under the authority of the Fiduciary Recipient himself through a public auction and taking repayment of the receivables from the sale proceeds; c. private sales carried out based on an agreement between the Giver and the Fiduciary Recipient if, in this way, the highest price that is profitable for the parties can be obtained.

So all this time, what the creditors have been doing is ignoring the execution process through a decision in court on the pretext that the fiduciary guarantee certificate based on the provisions of article 15 paragraph (2) has binding legal force and has the same status as a decision in court, thus according to the creditors there is no need to file a lawsuit in court to carry out the execution.

CONCLUSION

In this article, the authors conclude that a finance institution/leasing company without fiduciary certificates does not have the right to withdraw vehicles unilaterally. If leasing continues without a court decision, the action can be considered a violation of the law. Therefore, the leasing company that made forced withdrawals of vehicles without a fiduciary certificate remains ineffective. Even though there are legal provisions that regulate it, such as Law number 42 of 1999 concerning Fiduciary Guarantees, the Civil Code, the Consumer Protection Law, and Constitutional Court Decision Number 18/PUU-XVII /2019, in practice, there are still many leasing companies that continue to execute guarantees illegally without going through the correct legal procedures.

Acts against the law in the execution of unilateral workers by the finance institution in the Fiduciary Guarantee Law is an act against the law (*onrechtmatigedaad*) in the execution of the fiduciary guarantee object can occur if the creditors committed acts that are contrary to the decision of the Constitutional Court Number 18/PUU- XVII/2019 and the decision of the Constitutional Court Number 2/PUU- XIX/2021. Suppose the creditor carries out the execution of his own authority without the Debtor giving the object of fiduciary guarantee, and there is no agreement regarding the promise injury between the Debtor and the creditor. In that case, this is contrary to the two decisions of the Constitutional Court, so the act is an act against the law.

Legal remedies that can be taken by the Debtor when there is a forced withdrawal by the leasing company without a fiduciary certificate, in accordance with the Debtor's rights, the Debtor can take legal action by: Filing a lawsuit against the leasing agent based on an unlawful act (article 1365 of the Civil Code) to request compensation or return of the vehicle, Reporting the leasing action to the Financial Services Authority (OJK) to be given administrative sanctions including revocation of the business license, Reporting to the Dispute Resolution Body (BPSK) if there is a violation of consumer rights in accordance with the Consumer Protection Law, and Submit a report to the police if threats, violence or confiscation occurs during the withdrawal process or submit a lawsuit to the District Court.

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